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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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GREGORY D. BARREN, SR., ) Case No.: 2:11-cv-00650-RLH-CWH  
Plaintiff, )  
vs. )  
DAVID ROGER, District Attorney; OFFICER )  
T. ROBINSON, P# 7466; OFFICER R. KENT, )  
P# 6179; OFFICER D. SHANE, P# 6727, )  
Defendants. )  
\_\_\_\_\_  
ORDE  
(Motion to Dismiss #11)

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Before the Court is Defendant Officers Terry Robinson, Raymon Kent, and Donald Shane's **Motion to Dismiss** (#11, filed Sept. 16, 2011) based on a failure to state a claim. The Court has also considered Plaintiff Gregory D. Barren, Sr.'s Opposition (#15, filed Sept. 27), and the Defendant Officers' Reply (#16, filed Oct. 7). Plaintiff also filed a surreply (#17, filed Oct. 13).

**BACKGROUND**

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As the facts of this case are not necessary to the disposition of this motion, the Court declines to give an extensive recitation of the allegations in this case. In essence, Barren claims that he and his girlfriend, Suzie Bush, got into a heated argument at his home. Bush called

1 and talked to an unnamed friend, who called the police and told them Barren had acted violently  
 2 towards Bush. The Defendant Officers arrived on the scene and arrested Barren despite no visible  
 3 signs of illegality, relying solely on Bush's friend's phone call. Barren now brings this action  
 4 under § 1983 alleging violations under the 4th and 14th Amendments to the United States  
 5 Constitution. Now before the Court is the Defendant Officers' motion to dismiss. For the reasons  
 6 discussed below, the Court grants the motion.

## 7 DISCUSSION

### 8 I. Legal Standard

9 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which  
 10 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "a short  
 11 and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P.  
 12 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require  
 13 detailed factual allegations, it demands "more than labels and conclusions" or a "formulaic  
 14 recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)  
 15 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). "Factual allegations must be enough to rise  
 16 above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a  
 17 complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its  
 18 face." *Iqbal*, 129 S. Ct. at 1949 (internal citation omitted).

19 In *Iqbal*, the Supreme Court recently clarified the two-step approach district courts  
 20 are to apply when considering motions to dismiss. First, a district court must accept as true all  
 21 well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the  
 22 assumption of truth. *Id.* at 1950. Mere recitals of the elements of a cause of action, supported only  
 23 by conclusory statements, do not suffice. *Id.* at 1949. Second, a district court must consider  
 24 whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 1950. A  
 25 claim is facially plausible when the plaintiff's complaint alleges facts that allows the court to draw  
 26 a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 1949. Where

1 the complaint does not permit the court to infer more than the mere possibility of misconduct, the  
 2 complaint has “alleged—but not shown—that the pleader is entitled to relief.” *Id.* (internal  
 3 quotation marks omitted). When the claims in a complaint have not crossed the line from  
 4 conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570.

5 The Court also notes the well-established rule that *pro se* complaints are subject to  
 6 “less stringent standards than formal pleadings drafted by lawyers” and should be “liberally  
 7 construed.” *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007). This is particularly true in civil  
 8 rights cases. *Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988)  
 9 (holding that courts must afford *pro se* plaintiffs “the benefit of any doubt”).

## 10 II. Analysis

11 Section 1983 provides a mechanism for the private enforcement of substantive  
 12 rights conferred by the Constitution and federal statutes. *Graham v. Connor*, 490 U.S. 386,  
 13 393–94 (1989). Section 1983 “is not itself a source of substantive rights,” but merely provides ‘a  
 14 method for vindicating federal rights elsewhere conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271  
 15 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). To state a claim under § 1983,  
 16 a plaintiff “must allege the violation of a right secured by the Constitution and the laws of the  
 17 United States, and must show that the alleged deprivation was committed by a person acting under  
 18 color of law.” *West v. Atkins*, 487 U.S. 42, 48–49 (1988).

19 In this case Barren sues the Defendant Officers and District Attorney David Roger  
 20 in their official capacities. Suing a government employee in his official capacity is the functional  
 21 equivalent of suing the governmental entity itself and not the actual individual named. See  
 22 *Brandon v. Holt*, 469 U.S. 464, 469-70 (1984); *Larez v. City of Los Angeles*, 946 F.2d 630, 646  
 23 (9th Cir. 1991). To properly sue a government entity under § 1983, a plaintiff must allege that the  
 24 constitutional deprivation of which he complains “was inflicted pursuant to an official policy or  
 25 custom.” *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir 2001) (citing  
 26 *Monell v. Dep’t. of Soc. Servs.*, 436 U.S. 658, 690-91 (1978). Here, however, Barren’s complaint

1 is devoid of any allegations of policies or customs. Without even the bare allegation of an  
2 improper policy or practice at the Las Vegas Metropolitan Police Department (the Defendant  
3 Officer's employer), Barren's first and second claims against the Defendant Officers in their  
4 official capacity fail. Thus, the Court dismisses Barren's first and second claims without  
5 prejudice.

6 **CONCLUSION**

7 Accordingly, and for good cause appearing,

8 IT IS HEREBY ORDERED that Defendants Robinson, Kent, and Shane's Motion  
9 to Dismiss (#11) is GRANTED without prejudice.

10 Dated: January 19, 2012.

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12 ROGER L. HUNT  
13 United States District Judge